IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 3460 OF 2007

Mr.Ashok Vishwanath Hiremath
and others. ... Applicants.

V/s.

The State of Maharashtra. ... Respondent.

Subhash Jha i/b. Law Global for the applicants.

K.V.Saste, A.P.P. for the State.

D.V.Soman for the complainant.

CORAM: V.C.DAGA, J.

DATED: 29th October 2007.

P.C.:

. Heard learned counsel for the applicants and learned A.P.P. for the State.

2. By this application, under section 438 of Code of Criminal Procedure, 1973 (Cr.P.C.), the applicants are seeking anticipatory bail in C.R.No.I-164/2007 of MIDC, Waluj Police Station which has been transfer for investigation by GBCB, CID (EOW), Mumbai for the offences punishable under sections 406, 420, 468, 471 read with section 34 of Indian Penal Code.

3. The learned A.P.P., appearing for the State

has raised preliminary objection to the maintainability of this application before this Court contending that the offence is registered with the Waluj Police Station, Aurangabad, hence the Bench of the High Court at Aurangabad shall have jurisdiction to consider application under section 438 of Cr.P.C.

4. It appears that the State Government vide its order dated 17th September, 2007 has transferred the investigation to the Additional Police Commissioner (A.C.P.), Economic Offences Wing (EOW), the officer who is above the rank of Sub Inspector, Crime Branch, Special Branch I and II, Criminal Investigation Department, Greater Mumbai relying on the order dated 11th April, 1967 published in the Government Gazette dated 18th May, 1967.

5. According to learned A.P.P., the A.C.P., E.O.W. shall be deemed to be the officer in-charge of the Waluj police station for the purposes of investigation. He submits that merely because the case has been transferred to C.I.D. (EOW), Mumbai, that does not mean that this Court has a jurisdiction to deal with the matter. He, thus, submits that the Aurangabad Bench of this Court alone would be the proper Court to deal with the application. In addition to this, he further submits that Aurangabad Bench of this Court is already seized of the matter

being Criminal Writ Petition No.460/2007 as such applicants should be directed to approach Bench at Aurangabad to seek appropriate relief.

6. Mr.Jha tried to contend that since the officer investigating the offence in question is attached to the Crime Investigation Department, Grater Mumbai this Court can also exercise jurisdiction and grant appropriate relief. However, he could not take his submission to the logical end.

7. In the above view of the scenario, the submission made by the learned A.P.P. needs acceptance. Consequently, this application moved by the present applicants to seek anticipatory bail is rejected leaving the applicants to approach Bench at Aurangabad. All rival contentions on merits are kept open.

8. At this stage, learned A.P.P. made a statement that till this Friday, i.e. 2nd November, 2007, no arrest would be effected. The statement made in this behalf is taken on record.

JUDGE